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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02368

[REDACTED]

COUNSEL: NONE

[REDACTED]

HEARING REQUESTED: NO

APPLICANT’S REQUEST

Her deceased spouse’s discharge be upgraded to a medical retirement.

APPLICANT’S CONTENTIONS

The Informal Physical Evaluation Board (IPEB) found her deceased spouse unfit for duty with a recommendation for permanent retirement. The decision was published after he passed away, but he would have agreed to the findings and accepted the permanent retirement. A correction of her deceased spouse’s record would allow her family to receive retirement benefits.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the widow of a deceased Air National Guard (ANG) senior airman (E-4).

On 30 Mar 22, according to DAF Form 618, *Medical Board Report*, the deceased service member was diagnosed with Testicular Cancer and referred to the IPEB.

On 31 Mar 22, according to a Department of Veterans Affairs (DVA) Rating Decision Letter, the deceased service member was granted service connection for neoplasms of the male reproductive system (also claimed and referred as testicular cancer) with an evaluation of 100 percent, effective 26 Mar 21. On this same date, according to a Certificate of Death, provided by the applicant, the deceased service member died of Metastatic Testicular Cancer.

On 6 Apr 22, according to AF Form 356, *IPEB Findings and Recommended Disposition of the USAF Physical Evaluation Board (PEB)*, the Board found the deceased service members medical condition, Testicular Cancer (Stage 3b Non-seminoma Left), DVA rated as neoplasms of the male reproductive system, was imminently terminal, making him incompatible with the rigors of military service and prevented him from reasonably performing the duties of his office, grade, rank, or rating. Accordingly, the IPEB recommended the deceased service member be permanently retired with a disability rating of 100 percent IAW the Veterans Affairs Schedule for Rating Disabilities (VASRD) guidelines.



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For more information, see the excerpt of the applicant's record at Exhibit B.

AIR FORCE EVALUATION

AFPC/DPFDD finds there is no evidence of an error or injustice at the time of the Disability Operations Branch processing. They were not aware the deceased service member was separated, but understood he passed away as a Traditional Guardsman (not in military status) while he was going through the Integrated Disability Evaluation System (IDES) process. They received the disability case file on 31 Mar 22. On 6 Apr 22, the IPEB adjudicated the case and recommended "Permanent Retirement" with a 100 percent disability rating. The IPEB's recommended findings were forwarded to the Physical Evaluation Board Liaison Officer (PEBLO) on this same day and it was discovered the applicant passed away the previous week, on 31 Mar 22, the same day the PEBLO sent the case file to AFPC/DPFDD. Unfortunately, once the case manager was notified of the applicant's untimely passing, the case could not continue processing. In accordance with Air Force Instruction (AFI) 36-3212, *Physical Evaluation of Retention, Retirement and Separation*, paragraph 2.9.3, case processing halted, and disenrollment actions from the IDDES were completed on 7 Apr 22. Therefore, neither a disability retirement date nor a disability separation date was ever established, and they were unaware of what was briefed to the family. Lastly, had they been made aware of the deceased service member's passing on 31 Mar 22, the same day his case was received, case processing would have immediately ceased at that time. AFPC/DPFDD recommended the AFBCMR coordinate with NGB/A1 for additional information which may be helpful in the decision-making process.

The complete advisory opinion is at Exhibit C.

ADDITIONAL AIR FORCE EVALUATION

NGB/A1PS recommends granting the applicant's request for a medical retirement as there is evidence of an error or injustice. The deceased service member was going through the IDDES process and passed away on 31 Mar 22. AFPC/DPFDD acknowledges in their advisory opinion there was an administrative error because the IPEB was not informed the service member passed away on 31 Mar 22, but continued to process the case and concluded its processing with a recommendation of "Permanent Retirement" with a 100 percent disability rating on 6 Apr 22. Furthermore, an additional administrative error occurred on 13 Apr 22, when the PEBLO acknowledged in an email the deceased service was permanently retired, "100 percent on the DoD and DVA side" and provided documentation. Additionally, in the same email thread the family liaison officer (FLO) was notified of the determination and forwarded the PEBLO documentation to the applicant on 14 Apr 22. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The applicant was notified of the benefits when the PEBLO should not have continued to process the case, nor release the information due to the member's death.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent a copy of the advisory opinion to the applicant on 28 Nov 22 for comment (Exhibit E), and the applicant replied on 20 Dec 22. In her response, the applicant contended her deceased spouse planned to retire from the military and was so proud of his service. They were all blindsided by his diagnosis with testicular cancer in Jun 21. He deserves to have his records changed to reflect retirement because given the opportunity he would have chosen that. The MEB process started and completed the day prior to his death. While at her husband's bedside, the applicant and service member did all they could by faxing, signing paperwork, making phone calls, and sending emails

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to finish the MEB process as was the service members desire before passing away. The applicant needs the TRICARE coverage and retirement benefits for her family. She implores the Board to fix this egregious error.

The applicant’s complete response is at Exhibit F.

FINDINGS AND CONCLUSION

- 1. The application was timely filed.
- 2. The applicant exhausted all available non-judicial relief before applying to the Board.
- 3. After reviewing all Exhibits, the Board finds the evidence presented demonstrates an error or injustice. While the Board notes the conflicting advisory opinions prepared in this case; however, after thoroughly reviewing this application, the Board concurs with the rationale and recommendation of NGB/A1PS and finds a preponderance of the evidence substantiates the applicant’s contentions. Specifically, the Board notes AFPC/DPFDD ceased processing the service member’s Integrated Disability Evaluation System (IDES) package after being notified of his passing and the IPEBs recommendation the service member be permanently retired with a 100 percent compensable disability rating, which is sufficient to justify granting the applicant’s request her deceased spouse’s discharge be upgraded to a medical retirement. Therefore, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to MEMBER be corrected to show:

a. On 29 Mar 22, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was (Stage 3b Non-seminoma Left) Testicular Cancer, under the Veterans Affairs Schedule for Rating Disabilities (VASRD) code 7524-7528, rated at 100 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not received as a direct result of armed conflict or caused by an instrumentality of war.

b. On 29 Mar 22, he was discharged from active duty and on 30 Mar 22, he was permanently retired with a compensable percentage for physical disability of 100 percent.

c. His election of the Survivor Benefit Plan option will be corrected in accordance with his expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02368 in Executive Session on 26 April 23:

[REDACTED], Panel Chair
 [REDACTED], Panel Member
 [REDACTED], Panel Member

[REDACTED]

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All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 6 Sep 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFDD, dated 18 Oct 22.
- Exhibit D: Advisory opinion, NGB/A1PS, dated 11 Nov 22.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 28 Nov 22.
- Exhibit F: Applicant's Response, dated 20 Dec 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

 Expired certificate

X

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Board Operations Manager, AFBCMR

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